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266 NLRB No. 4

D--9518
Detroit, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

BEL-AIRE PROCESS, INC.

and

Case 7--CA--20929

LOCAL NO. 591, SIGN, PICTORIAL AND DISPLAY UNION, AFL--CIO

DECISION AND ORDER

Upon a charge filed on July 14, 1982, by Local No. 591, Sign, Pictorial and Display Union, AFL--CIO, herein called the Union, and duly served on Bel-Aire Process, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint on August 23, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that in or about February 1981, Respondent agreed to abide by the terms of a collective-bargaining agreement regarding the terms and conditions of employment of a unit of

employees for whom the Union is the exclusive bargaining representative; that the collective-bargaining agreement effective from February 1, 1981 through February 1, 1983, provides, inter alia, that all union dues deducted shall be remitted to the Union on a quarterly basis and by no later than the last day of each calendar quarter; but that since March 31, 1982, and continuing to date, Respondent has failed and refused to submit to the Union dues deducted from the paychecks of unit employees. Respondent failed to file an answer to this complaint.

On October 15, 1982, counsel for the General Counsel filed directly with the Board a Motion for Default Judgment. Subsequently, on October 20, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Default Judgment should not be granted. Respondent thereafter failed to respond to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment [1]

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint duly served on Respondent explicitly stated that unless an answer were filed within 10 days from the date of service ''all of the allegations in the [c]omplaint shall be deemed to be admitted true and may be so found by the Board.'' Respondent did not file an answer to the complaint. Counsel for the General Counsel wrote to Respondent on September 15, 1982, informing Respondent that it had failed to file an answer to the complaint issued in this case, that an extension of time to file an answer pursuant to Section 102.22 of the Board's Rules and Regulations could be obtained, and that unless an answer were filed by September 27, 1982, a motion would be made before the Board for the entry of an order based upon the undenied allegations of the complaint. Respondent failed to file an answer within the extended time. Thereafter, on October 12, 1982, no

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[1] In accord with Board procedures, we shall treat the General Counsel's Motion for Default Judgment as a Motion for Summary Judgment.

answer having been filed, counsel for the General Counsel filed the instant Motion for Summary Judgment.

As Respondent has filed no answer within 10 days from the service of the complaint, nor within the extended time offered it by the General Counsel, and as no good cause for the failure to do so has been shown, in accordance with the rule set forth above, the Board deems the Respondent to have admitted all allegations of the complaint to be true, and specifically finds them to be true. Accordingly, we hereby grant the General Counsel's Motion for Summary Judgment.

On the basis of the complaint and the entire record in this case, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent, a Michigan corporation, is and has been at all times material herein engaged in the manufacture, nonretail sale, and distribution of screen printing and related products from its place of business at 6555 Sherwood, Detroit, Michigan. During the year ending December 31, 1981, which period is representative of its operations during all times material herein, Respondent shipped products valued in excess of $50,000 from said place of business directly to points located outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act,

and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Local No. 591, Sign, Pictorial and Display Union, AFL--CIO, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

Since approximately 1957, and continuing to date, the Union has been the exclusive bargaining representative within the meaning of Section 9(a) of the Act of all full-time and regular part-time production and maintenance employees employed by Respondent at its facility located at 6555 Sherwood, Detroit, Michigan, excluding all office clerical employees, and guards and supervisors as defined in the Act. In or about February 1981, Respondent agreed to abide by a collective-bargaining agreement regarding the terms and conditions of employment of employees employed in the unit described. The agreement is in effect, by its terms, from February 1, 1981, through February 1, 1983. It provides, inter alia, that all union dues deducted shall be remitted to the Union on a quarterly basis and by no later than the last day of each calendar quarter. Since March 31, 1982, and continuing to date, Respondent has failed and refused to remit to the Union the union dues deducted from the paychecks of employees for the quarterly periods ending March 31, 1982, and June 30, 1982.

On the basis of this conduct, we find that Respondent is and has been refusing to bargain collectively with the exclusive

representative of its employees, and thereby is and has been engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent is and has been engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. To remedy fully Respondent's conduct, we shall direct Respondent to remit to the Union dues to be computed in the manner prescribed in Ogle Protection Service, Inc., 183 NLRB 682 (1970), with interest thereon as set forth in Florida Steel Corporation, 231 NLRB 651 (1977).[2]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

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[2] See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

Conclusions of Law

1. Bel-Aire Process, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local No. 591, Sign, Pictorial and Display Union, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees employed by Bel-Aire Process, Inc., at its facility located at 6555 Sherwood, Detroit, Michigan, excluding only all office clerical employees, and guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since approximately 1957, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. Bel-Aire Process, Inc., by failing and refusing to remit to the union dues deducted from the paychecks of employees for the quarterly periods ending March 31, 1982, June 30, 1982, and continuing to date, pursuant to a valid dues-checkoff provision in a collection-bargaining agreement with the Union, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Bel-Aire Process, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to remit union dues to the Union pursuant to the collective-bargaining agreement in effect between the parties.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Immediately remit to the Union all union dues for the quarterly periods ending March 31, 1982, and June 30, 1982, as well as for any other quarterly periods for which Respondent may be delinquent, with interest, in the manner specified in ''The Remedy'' section of this Decision.

(b) Post at its business office copies of the attached notice marked ''Appendix.''[3] Copies of said notice, on forms

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[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A (continued)

provided by the Regional Director for Region 7, after being duly signed by an authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C. January 12, 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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[3] JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT fail or refuse to remit union dues to Local No. 591, Sign, Pictorial, and Display Union, AFL--CIO, pursuant to the terms of the collective-bargaining agreement which we negotiated with the above Union in or about February 1981.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL immediately remit to the above labor organization all union dues for the quarterly periods ending March 31, 1982, and June 30, 1982, as well as for any other quarterly period for which we may be delinquent, with interest.

BEL-AIRE PROCESS, INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Patrick V. McNamara Federal Building, Room 300, 477 Michigan Avenue, Detroit, Michigan 48226, Telephone 313--226--3244.